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BUREAU OF INDIAN AFFAIRS
OFFICE OF THE REGIONAL DIRECTOR

Native Village of Kobuk

July 1, 2008

Via Certified Mail

Niles Cesar, Director
BIA Alaska Regional Office
P.O. Box 25520
Juneau, AK 99802

Re: Amendments to Native Village of Kobuk Constitution

Dear Mr. Cesar:

The Native Village of Kobuk recently held its annual meeting and adopted a number of amendments to the Village's constitution. Please find enclosed the Village's newly enacted constitution.

Sincerely,

Rosie Ward Pres.

cc: Roger Hudson, Esq., Office of the Regional Solicitor
Geoff Strommer, Esq.

Enclosures: June 2008 Final Constitution

COPY

PREAMBLE

We, the Native Village of Kobuk ("the Tribe"), assert our freedom as a sovereign people in a historic relationship with the United States of America, in creating this Constitution. We adopt this Constitution to exercise the Tribe's inherent sovereign rights and powers in promoting the well-being and unity of this and succeeding generations, to affirm our faith in fundamental Native rights and traditions, and to promote our Tribe's social, cultural, economic and political progress. We adopt this Constitution under the inherent sovereign authority of our Tribe. This Constitution shall supersede the previously adopted Traditional Constitution of the Native Village of Kobuk approved by the tribal voters on April 29, 2005.

ARTICLE I – NAME

The name of this Eskimo tribe shall be the Native Village of Kobuk.

ARTICLE II- – TERRITORY

Section 1. Territory. The territorial jurisdiction of the Native Village of Kobuk shall extend to all lands and waters constituting the Indian country of the Tribe as defined by federal and tribal law. To the extent not inconsistent with federal law, such land and waters shall include, but are not limited to all lands and waters customarily and traditionally governed by the Native Village of Kobuk people, including lands withdrawn for selection for Native Village of Kobuk by the Kobuk Traditional Council under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et. seq.) and all fee lands and allotment within the traditional lands of the Tribe, regardless of the issuance of any patent or unrestricted fee title to any such lands.

Section 2. Jurisdiction. The Native Village of Kobuk shall have jurisdiction over all tribal members and over all persons, subjects, property and all activities occurring within its territory as defined by this Article. Nothing in this Article shall be construed to limit the ability of the Tribe to exercise its jurisdiction, based upon its inherent sovereignty as an Indian tribe.

ARTICLE III – MEMBERSHIP

Section 1. Base Member Roll. The base membership of the Native Village of Kobuk tribe shall consist of all Natives whose names appear on the base membership roll adopted by the Kobuk Traditional Council at the passage of this Constitution, provided that the Council may correct the base membership roll within two years following the adoption of this Constitution.

Section 2. Descendants of Member. Lineal descendants of members on the base membership roll are automatically eligible to be members of the Kobuk Traditional

Council subject to the provisions of this Constitution and to ordinances enacted pursuant to this Constitution.

Section 3. Adoption of Members. The Kobuk Traditional Council shall have the option to adopt Natives who set up residence in Kobuk but are not descendants of members listed on the base roll, according to the provisions of an enrollment ordinance.

Section 4. Membership and Enrollment Ordinances. The Kobuk Traditional Council shall have the power to enact ordinances and resolutions, not inconsistent with this Constitution, prescribing rules and regulations governing membership, including application and appeal procedures, maintenance of the membership roll, loss of membership, relinquishment of membership, and adoption of members.

ARTICLE IV – GOVERNING BODY

Section 1. Kobuk Traditional Council. The governing body of the Native Village of Kobuk shall be the Kobuk Traditional Council, also referred to as the "Council" or "Traditional Council" in this Constitution. The Council shall represent the Native Village of Kobuk and shall exercise the powers of the Tribe cited in this Constitution unless otherwise provided by this Constitution or by tribal ordinance.

Section 2. Composition. The Kobuk Traditional Council shall consist of seven (7) members who shall be elected by the qualified voters casting their votes in an election in accordance with Article VIII of this Constitution. All seven (7) Council members shall be entitled to vote, except in cases of conflict of interest.

Section 3. Officers. The Kobuk Traditional Council shall include three officers positions; President, Vice President, and Secretary. The President shall be a resident of the Native Village of Kobuk.

Section 4. Qualifications for Traditional Council Office. Tribal members who are 18 years of age or older, and who have never been convicted of a homicide or sexual assault, are eligible to hold a position on the Kobuk Traditional Council.

Section 5. Quorum. Four (4) Kobuk Traditional Council members shall constitute a quorum for the transaction of the business at any meeting of the Council unless a larger number is specifically required by this Constitution. The Council members may meet either in person or be telephonically connected to the meeting.

Section 6. Terms of Office. Kobuk Traditional Council members shall hold office for a term of three (3) years, provided that two and one year terms for two positions each may be used to initiate staggering.

Section 7. Conflict of Interest. No Kobuk Traditional Council member shall vote on any matter, including but not limited to employment contracts, project funding,

project allocations and appointments to tribal committees, in which he or she has a personal interest. A personal interest includes involvement of his or her spouse or children. The Kobuk Traditional Council members present when such an issue is decided shall reveal such conflict prior to any vote.

ARTICLE V – DUTIES OF OFFICERS

Section 1. Assuming Duties. Newly elected officers of Kobuk Traditional Council shall assume their duties immediately upon being elected.

Section 2. President. The President shall preside over meeting of the Kobuk Traditional Council. The President shall provide general supervision of the affairs of the Native Village of Kobuk. The President shall co-sign, with either the Vice President or the Secretary, all contracts, leases and other documents approved by a quorum of the Council. When the Kobuk Traditional Council is not in session, he or she shall be the official representative of the Tribe.

Section 3. Vice President. The Vice President shall assist the President when called upon to do so. In absence of the President, the duties of the Vice President shall be the same as those of the President.

Section 4. Secretary. The Secretary shall preside at Kobuk Traditional Council meetings in the absence of the President and Vice President. The Secretary shall carry out the financial directives of the Council, receive all monies and keep accurate account of the receipts and disbursements, except when these duties are otherwise delegated by the Kobuk Traditional Council. The Secretary shall give financial reports as requested by the Council. The Secretary shall take or delegate the taking of minutes of all meetings. The Secretary shall issue or delegate the duty of issuing notices of all Council meetings and Tribal elections. Upon vacating his or her office, the Secretary shall immediately turn over all the records and papers in his or her possession to his or her successor or to the Council.

ARTICLE VI – MEETINGS

Section 1. Regular Meetings of the Kobuk Traditional Council. Regular meetings of the Council shall be held monthly: the time, place and date shall be designated by the Council. Notice of meetings shall be posted prior to meetings in public places in the Native Village of Kobuk. All regular meetings shall be open to the general Kobuk tribal membership.

Section 2. Special Meetings. The President and three (3) other Council members may call a special meeting of the Council upon giving at least twenty-four (24) hours notice to members of the Council. Notice shall be posted in public places in the Native Village of Kobuk.

Section 3. Emergency Meetings. The Kobuk Traditional Council may meet for an emergency meeting without notice only when emergency circumstances warrant such a meeting.

Section 4. Executive Session. The Kobuk Traditional Council may move to meet in a closed executive session during regular, special or emergency meetings of the Council when the subject matter concerns child welfare, personnel, litigation, and other matters made confidential by tribal ordinance.

Section 5. Tribal Membership Meeting.

A. Tribal membership meetings may be called by the President or by four Council members.

B. Tribal membership meeting may also be held by assembling a quorum of 30% of the adult tribal members.

C. Notice for any tribal membership meeting shall be posted in public places in the Native Village of Kobuk at least two weeks prior to any such meeting.

ARTICLE VII – REMOVAL, RECALL, FORFEITURE, AND VACANCIES

Section 1. Removal. Any member of the Kobuk Traditional Council found guilty by the Council of neglect of duty, gross misconduct in office or an offense involving dishonesty may be removed from office by the Council by at least (4) Council members voting in favor by secret ballot, provided, that such member shall first be given ten (10) days notice in writing of the charges against him or her and be given an opportunity to answer such charges before the Council at an open meeting of the Council. If the person subject to removal fails to appear before the Council, the Council shall preside over the meeting at which his or her removal is being considered. All questions of removal under this Section shall be resolved by the Council and the decision of the Council shall be final.

Section 2. Recall. Any member of the Kobuk Traditional Council may be recalled by the tribal voters through a petition and election process. A valid petition requesting such recall signed by at least 30% of the qualified voters shall be presented to the Council. The Council shall call a special election to consider the recall of the named Council member within thirty (30) days upon receiving the petition, in accordance with Article VIII, Section 4. If the majority of the voters vote in favor of the recall, the official shall be removed. No official may be subjected to recall proceedings more than once in the course of his or her term. If the Council fails to call a special election to consider the recall, the tribal membership may hold a tribal membership meeting to conduct such business, provided that a quorum is established. Circulating a new petition to call such a meeting shall not be required, but notice shall be posted in public places in the Native village of Kobuk at least (2) weeks in advance.

Section 3. Forfeiture. Any member of the Kobuk Traditional Council who submits a written resignation, is convicted of a felony involving dishonesty or moral turpitude while in office, or is absent from three successive regular meetings of the Council without being excused by the Council shall automatically forfeit his or her office.

Section 4. Vacancies. Any vacancy of the Council shall be filled by appointment through a majority vote of the remaining members of the Council. A Council member appointed to fill a vacancy shall serve until the next regular election.

ARTICLE VIII – ELECTIONS

Section 1. Voter Qualifications. Any tribal member eighteen (18) years of age or older, shall be qualified to vote.

Section 2. General Guidelines for Election. The outcome of an election shall be determined by a simple majority of the qualified voters casting their votes during the election unless otherwise specified by this Constitution or by ordinance. The candidate receiving the highest number of votes for each available seat shall be declared the winner.

Section 3. Kobuk Traditional Council Elections. Elections for Kobuk Traditional Council positions shall be held the second week in June in the Native Village of Kobuk. The Council shall set the date and shall give at least two (2) weeks notice of such elections. Notice shall be posted in public places in the Native Village of Kobuk prior to such elections.

Section 4. Special Elections. The Council may, by resolution, call a special election for the purposes of deciding a referendum, initiative, or recall, upon giving at least two (2) weeks notice to the tribal members. Notice shall be posted in public places in the Native Village of Kobuk.

Section 5. Election Committee. The Council shall appoint an Election Committee of at least two members to supervise, administer, and conduct all tribal elections. The Election Committee shall certify the election of tribal officials. In any election for Council positions, no member of the Election Committee shall at the same time be a member of the Council or a candidate for a position on the Council.

Section 6. Election Ordinance. An election ordinance, consistent with this Constitution, may be adopted by the Council, which shall set forth the procedures to be followed in conducting each of the various types of elections called for in this Constitution.

Section 7. The Initial Traditional Council. The incumbent members of the Traditional Council as of the date of the adoption of this Constitution shall remain in office until the next general election is held. The first election shall be held in

accordance with all other applicable provisions of this Constitution and applicable ordinances.

Section 8. Nominations. For all elections of Council members, a nomination of tribal members as candidates for Council positions shall be conducted consistent with a nomination process set forth in an election ordinance adopted by the Council.

Section 9. Ballots. All voting at regular and special elections shall be done by secret written ballot as set forth in an Election Ordinance.

Section 10. Absentee Ballots. Absentee voting shall be permitted as set forth in an Election Ordinance.

Section 11. Election Results. The Election Committee shall certify the results of an election within three (3) days after the election date.

Section 12. Tie Votes. Tie votes between two or more candidates shall be decided by a special run-off election. All eligible voters shall be entitled to vote in any runoff election. The run-off election shall be held in accordance with the procedures of an Election Ordinance.

Section 13. Challenges. Any tribal member may challenge the results of any election by presenting his or her challenge to the Council within five (5) days after the election results are certified. The Council shall decide all election challenges within ten (10) days from the date the challenge is filed.

Section 14. Oath of Office. The oath of office for each newly elected Kobuk Traditional Council member shall be administered by the Election Committee within thirty (30) days after the Election Committee declares the winner of a position, unless a challenge is filed and in that case within thirty (30) days after a final decision by the Council. If a challenge is filed but it does not relate to all of the elected positions, the oath of office shall be administered to the newly elected Council members whose positions have not been challenged within thirty (30) days after the Election Board declares the winners. Each incumbent Council member shall remain in office until the oath of office is administered to the newly elected Council member for his or her position. Upon expiration of the incumbent's term of office, he or she shall transfer all tribal records within his or her control to the newly elected Council member.

ARTICLE IX – POWERS OF THE KOBUK TRADITIONAL COUNCIL

Section 1. General Powers. Except as specifically limited by this Constitution or by tribal ordinance, the powers of the Tribe shall be exercised by the Council. The powers shall include all the inherent powers of a federally-recognized tribal government which do not violate federal law, including but not limited to those specified in this Article.

Section 2. Internal Procedures. Consistent with this Constitution, the Council may enact ordinances to govern its internal procedures and organization and to further define the duties of tribal officers.

Section 3. Traditional Council Powers. In addition to all powers vested in the Tribe or Council by existing law and this Constitution, the Tribe acting through the Council shall have the following powers:

A. To consult, negotiate, contract, oversee, or conclude agreements with and make recommendations to federal, state, local, and tribal governments, and with individuals, associations, corporations, enterprises or organizations, on activities which may affect the Tribe.

B. To promote and protect the peace, health, education and general welfare of the members of the Tribe, and to administer services that contribute to the social and economic development of the Tribe and its members.

C. To levy and collect taxes, fees, and assessments for Tribal purposes.

D. To encourage, guard and foster traditional cultural practices of the Kobuk people, including the arts, crafts, religion, language and customs of the Native people of Kobuk.

E. To prevent the sale, disposition, lease or encumbrance of tribal land, interests in lands, or other tribal assets without the consent of the Tribe.

F. Except as limited by Article X of this Constitution, to manage, sell, lease, exchange, acquire, or otherwise deal with tribal or other property.

G. To acquire property and accept gifts.

H. To administer tribal assets, including funds, and to manage all economic affairs and enterprises of the Tribe.

I. To engage in tribal economic development enterprises for the benefit of tribal members.

J. To provide for the maintenance of law and order and the administration of justice, including the establishment of appropriate tribal courts or other judicial bodies.

K. To charter enterprises, corporations, and associations for the benefit of tribal members.

L. To enact ordinance consistent with this Constitution for the conduct and administration of all tribal functions.

M. To regulate inheritance among members, whether by intestacy or otherwise.

N. To administer any funds within the control of the Tribe.

O. To regulate child custody and other domestic relations among members.

P. To protect and preserve the wildlife and natural resources within the area under the jurisdiction of the Tribe or upon which its members rely for subsistence.

Q. To regulate and control the use of the natural resources within the area under the jurisdiction of the Tribe or which otherwise affect the health, safety or economic well-being of the Tribe or its members.

R. To employ legal counsel in accordance with applicable federal laws.

S. To join and/or charter housing authorities.

T. To protect members' rights in personal property.

U. To establish land policies, adopt a land use ordinance, exercise the power or eminent domain and otherwise regulate all land use within those areas under the jurisdiction of the Tribe in accordance with applicable law.

V. To enact ordinances, procedures and regulations necessary to give effect to any provision of this Constitution, and to exercise any power not prohibited by federal law.

W. To approve or disapprove the hiring of any employee in any field of work which directly or indirectly affects the tribe or a tribal member.

X. To appoint subordinate committees, commissions, boards, tribal officers and employees, and to set their compensation, tenure and duties;

Y. To enact laws, ordinances and resolutions necessary or incidental to the exercise of its legislative powers;

Z. To take any and all actions necessary and proper for the exercise of the foregoing powers and duties, including those powers and duties not enumerated above, and for all other powers and duties now and hereafter delegated to the Traditional Council, or vested in the Tribe by federal law or through its inherent sovereignty.

Section 4. Omissions. Any rights and powers vested in the Tribe but not expressly referred to in this Constitution shall not be lost by reason of their omission, but may be exercised by the Council unless expressly prohibited by this Constitution.

ARTICLE X – LIMITATIONS ON POWERS

Section 1. Tribal Lands. The following powers are specifically reserved to the qualified voters of the Tribe acting through a general tribal membership meeting or a property called election:

(a) No lands or interests in lands owned by the Tribe may be sold, leased for longer than 10 years, encumbered, or disposed of without an affirmative vote of at least 30% of the qualified voters.

(b) Nothing in this Article shall prohibit the Kobuk Traditional Council from establishing and administering a tribal land assignment program by ordinance.

Section 2. Impairment of Contracts. The Tribe shall generally be subject to Native Village of Kobuk law; provided however, that no legal contract between the Tribe and any non-tribal member or entity, or no non-tribal member or entity which enters into any such contract with the Tribe shall be subject to any Native Village of Kobuk law enacted subsequent to the execution of such contract to the extent that such subsequent law is held by a court of competent jurisdiction to effect a material impairment of such contract and to have a primary purpose other than protecting health or safety within the jurisdiction of the Tribe.

ARTICLE XI – POPULAR PARTICIPATION IN GOVERNMENT

Section 1. Initiative. The Council shall submit any proposed ordinance or resolution to popular initiative upon petition of at least 30% of the eligible voters of the Tribe. The petitions shall be submitted to the Council. The Council shall then call an election to be conducted by the Election Committee no later than sixty (60) days after receipt of the petition. If the Council fails to act on the petition, the ordinance or resolution may be brought before a tribal membership meeting. An affirmative vote by a majority of qualified voters at a tribal membership meeting where a quorum has been established, shall be required to adopt or repeal such ordinances or resolutions.

Section 2. Referendum. The Council, by an affirmative vote of at least four (4) of its members, may refer issues to the tribal membership in a tribal election. Such an election shall be conducted by the Election Committee within sixty (60) days of such Council decision. An affirmative vote by a majority of the eligible voters at a tribal membership meeting where a quorum is established shall be required to determine the Tribe's position on the issue submitted to a vote, or, a poll with prior notification may be held.

Section 3. Initiative and Referendum Decisions. The decision of the voters in any initiative or referendum election shall be binding on the Council and the Tribe and shall remain in full force until it is amended or rescinded by subsequent action of the voters or it expires by its own items.

ARTICLE XII – RIGHTS OF MEMBERS

Section 1. Access to Tribal Records. Tribal members shall have the right to review all tribal records, including financial records, during office hours in accordance with procedures established by the Council, except for child welfare cases, tribal enrollment records, litigation, personnel and confidential issues.

Section 2. Open Traditional Council Meetings. Tribal members have the right to be present at all Council meetings except during executive session of the Council.

Section 3. Indian Civil Rights. The Tribe shall provide to all persons within its jurisdiction the rights guaranteed by the Indian Civil Rights Act of 1968, as amended. The Tribe, in exercising the powers of self-government, shall not:

(a) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for redress of grievances;

(b) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and person or thing to be seized;

(c) subject any person for the same offense to be twice in jeopardy;

(d) compel any person in any criminal case to be a witness against himself;

(e) take any private property for a public use without just compensation;

(f) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense and to have these rights explained at the time of arrest;

(g) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

(h) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(i) pass any bill of attainder or ex pos facto law; or

(j) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

ARTICLE XIII – RESOLUTIONS AND ORDINANCES

Section 1. Resolutions. All final decisions on matters of temporary interest where a formal expression is needed shall be embodied in a resolution, noted in the minutes, and shall be available for inspection by the tribal membership during normal business hours.

Section 2. Ordinances. All final decisions on matters of permanent interest shall be embodied in ordinances. Such enactments shall be available for inspection by the tribal membership during normal business hours.

ARTICLE XIV – SOVEREIGN IMMUNITY OF THE NATIVE VILLAGE OF KOBUK

Nothing in this Constitution shall be deemed or construed to be a waiver of the sovereign immunity of the Native Village of Kobuk, which may only be waived by express resolution of the Kobuk Traditional Council, after receiving an affirmative vote of at least 30% of the qualified tribal voters, and only to the extent specified in such resolution and permitted by this Constitution and federal law, and limited as to duration, grantee, transaction, property or funds, if any, subject to the waiver, as well as specific to the court having jurisdiction and applicable law. Waiver of sovereign immunity of the Tribe shall not be deemed a general consent to the levy of any judgment, lien or attachment upon property of the Tribe other than property specifically pledged, assigned or otherwise explicitly subject to levy in the waiver resolution.

ARTICLE XV – AMENDMENTS OR REPEAL

The Constitution may be amended or repealed by a majority vote of the qualified voters of Native Village of Kobuk voting in an election called for that purpose, provided that at least 30% of those entitled to vote shall vote in such election, and that notice has been posted for a minimum of 2 weeks in public places in Kobuk Alaska.

ARTICLE XVI – SEVERABILITY

If any provision of this Constitution shall, in the future, be declared invalid by a court of competent jurisdiction, the invalid provision shall be severed and the remaining provisions shall continue in full force and effect.

ARTICLE XVII – SAVINGS

Unless inconsistent with this Constitution, all tribal law, whether written or unwritten, existing prior to adoption of this Constitution shall remain in effect.

ARTICLE XVIII – ADOPTION OF CONSTITUTION

This Constitution may be adopted by a majority vote of the qualified voters of the Native Village of Kobuk, voting at a special election in which at least 30% of those entitled to vote shall vote as required by the Traditional Constitution of the Native Village of Kobuk adopted on April 29, 2005, which this Constitution is replacing.

CERTIFICATION OF ELECTION RESULTS

The attached Constitution of the Native Village of Kobuk was submitted to the qualified voters of the Tribe on June 13, 2008, and was duly adopted by a vote of 33 for and 0 against the adoption of this Constitution in an election in which at least 30% of the qualified voters entitled to vote cast their ballots.

Rosie Ward
President

Miles Cleveland Jr.
Secretary

Wilbur Bernhardt
Vice President